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**Federal Communications Commission**  
**2004 Biennial Regulatory Review**  
**WT Docket No. 04-180**

**Wireless Telecommunications Bureau**  
**Staff Report**  
**January 5, 2005**

## I. OVERVIEW

1. Section 11 of the Communications Act of 1934, as amended, requires the Commission (i) to review biennially its regulations that apply to operations or activities of telecommunications service providers; and (ii) to determine whether those regulations are “no longer in the public interest as the result of meaningful economic competition between providers of such service.”<sup>1</sup> This Staff Report summarizes the findings of the staff’s review of the Federal Communications Commission’s rules implicated by Section 11 that are within the purview of the Wireless Telecommunications Bureau (WTB), *i.e.*, rules that “apply to the activities or operations” of wireless telecommunications carriers. Accompanying this report is a detailed analysis that identifies each rule part under review, explains the purpose, benefits, and disadvantages of the particular rule or rule part, and lists any staff recommendation for retaining, modifying, or repealing rules within that part.

## II. THE 2004 BIENNIAL REGULATORY REVIEW

2. This review builds upon the Staff Report completed as part of the 2002 Biennial Regulatory Review.<sup>2</sup> As in the *2002 Biennial Review Staff Report*,<sup>3</sup> this Report summarizes staff’s review of the Commission rules that affect wireless telecommunications carriers, the status of ongoing and recent initiatives, and recommendations on whether specific rules should be retained, modified, or repealed. The staff’s recommendations are reported in more detail in the attached rule part analysis,<sup>4</sup> which also summarizes the comments that were submitted in response to the Commission’s May 11, 2004 *Public Notice* initiating this Biennial Review.<sup>5</sup> In conducting this Section 11 review, staff considered: (1) the purpose of the rule; (2) the advantages of the rule; (3) the disadvantages of the rule; and (4) the impact competitive developments may have had on the need for the rule.

3. In addition to evaluating rules that affect wireless telecommunications carriers on the basis of whether they are “no longer necessary in the public interest as the result of meaningful competition,” WTB staff has taken the opportunity to consider whether any such rules should be streamlined, modified, or eliminated for reasons other than those related to competitive developments that fall within the scope of Section 11 review.

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<sup>1</sup> 47 U.S.C. § 161.

<sup>2</sup> See 2002 Biennial Regulatory Review, GC Docket No. 02-390, *Report*, 18 FCC Rcd 4726 (rel. Mar. 14, 2003); *Federal Communications Commission Biennial Regulatory Review 2002*, GC Docket No. 02-390, *Staff Report (2002 Biennial Review Staff Report)*.

<sup>3</sup> See generally *2002 Biennial Review Staff Report*.

<sup>4</sup> See Appendix IV.

<sup>5</sup> See “The Commission Seeks Public Comment in the 2004 Biennial Review of Telecommunications Regulations,” *Attachment*, “Rule Parts Containing Regulations Administered by the Wireless Telecommunications Bureau (WTB), WT Docket No. 04-180, *Public Notice*, 19 FCC Rcd 9090 (rel. May 11, 2004) (*2004 Biennial Review Public Notice*).

Thus, staff has reviewed whether circumstances other than the development of meaningful economic competition (e.g., technological change since the adoption of the rule, inconsistency in regulation of similarly situated services, reduction of regulatory burdens) justify streamlining, modification, or repeal of particular rules.

4. Once the Commission has made its determinations with respect to the recommendations in this report, staff expects that the Commission would initiate proceedings to modify or eliminate selected rules. These proceedings would conform to Commission procedural rules and the Administrative Procedure Act. Some of these proceedings have been initiated already, while we anticipate that others will be initiated next year.<sup>6</sup>

### III. SUMMARY OF REVIEW

5. The Wireless Telecommunications Bureau is responsible for licensing and regulating all wireless communications services other than broadcast and satellite services. Wireless communications services include commercially provided services such as cellular, Personal Communications Services (PCS), and paging, as well as public safety and private radio services.

6. The functions of the Bureau largely derive from Title III of the Communications Act, which governs licensing of spectrum in general and wireless services in particular.<sup>7</sup> The vast majority of the Commission's regulations affecting wireless carriers consist of: (1) allocation and service rules; (2) procedural rules concerning licensing and auctions; and (3) technical and operational rules.

7. The market for wireless carriers has changed dramatically in recent years as a result of entry by new wireless competitors, substantial growth, and increased competition in the wireless market. In 1993, Congress granted authority to the Commission to award wireless licenses by auction.<sup>8</sup> Since that time, the Commission has conducted 53 spectrum auctions for services such as broadband and narrowband PCS, Specialized Mobile Radio (SMR), Wireless Communications Service (WCS), Local Multipoint Distribution Service (LMDS), and numerous other fixed and mobile wireless services.<sup>9</sup> These auctions have resulted in a dramatic increase in the number of competing wireless service providers. In its *Ninth CMRS Competition Report*, released on September 28, 2004, the Commission concluded that there is effective competition in the Commercial Mobile Radio Services (CMRS) marketplace, which continues to benefit

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<sup>6</sup> See Appendix I.

<sup>7</sup> See generally 47 U.S.C. Title III.

<sup>8</sup> Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66, 107 Stat. 312. See 47 U.S.C. § 309(j).

<sup>9</sup> See <http://www.fcc.gov/wtb/auctions>.

consumers in the form of price competition and competition to provide innovative and improved service offerings.<sup>10</sup>

8. As a result of increased wireless licensing and new competition, the Commission has substantially deregulated many aspects of wireless services. The Commission has adopted a number of policies and rule changes to streamline application processing and reduce regulatory burdens, as discussed below. The dynamic and rapidly evolving nature of the wireless industry continues to make it important for the Commission to review its wireless regulations on a regular basis.

#### A. Scope of Review

9. On May 11, 2004, the Commission issued a Public Notice seeking comment on the rules and regulations within its purview under the 2004 Biennial Review.<sup>11</sup> The Bureau has reviewed the following rule parts implicated by Section 11 that affect wireless telecommunications carriers:<sup>12</sup>

Part 1 – Practice and Procedure – In addition to containing the procedural rules of general applicability to all Commission licensees, contains certain rules that explicitly address wireless telecommunications applications and proceedings (Subpart F) and procedures relating to competitive bidding (Subpart Q).

Part 17 – Construction, Marking, and Lighting of Antenna Structures – Contains rules pertaining to the construction, marking, lighting, registration, and notification relating to radio antenna structures used for provision of wireless radio services.

Part 20 – Commercial Mobile Radio Services – Contains rules applicable to CMRS providers, including rules relating to citizenship, interconnection to facilities of local exchange carriers, roaming, Title II obligations, and 911 service.

<sup>10</sup> See generally *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Ninth Report*, FCC 04-216 (rel. Sept. 28, 2004) (*Ninth CMRS Competition Report*). There has been a dramatic increase in the number of competing wireless providers since the first annual report on CMRS competition was issued in 1996.

<sup>11</sup> See *2004 Biennial Review Public Notice*, 19 FCC Rcd 9090 (rel. May 11, 2004).

<sup>12</sup> *Id.* The rule parts are discussed herein as set forth as in Title 47 of the Code of Federal Regulations. For streamlining purposes, this Staff Report does not, *infra*, cite each specific C.F.R. provision (e.g., 47 C.F.R. Part 1 or 47 C.F.R. § 1.923) for the particular Part or rule discussed herein. The *Public Notice* also identified Part 21 (Domestic Public Fixed Radio Services), and Parts 73 and Subpart I of Part 74 (Instructional Television Fixed Service) as within the purview of WTB's review but the Commission subsequently deleted these rules. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.; WT Docket Nos. 03-66, et al., *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004).

Part 22 – Public Mobile Services – Contains rules governing domestic, mobile, common carrier services including the cellular telephone service, that are authorized to provide radio telecommunication services for hire to the public.

Part 24 – Personal Communications Services – Contains rules applicable to general licensing and application filing requirements, technical standards, and operations for narrowband and broadband Personal Communications Services licensees.

Part 27 – Wireless Communications Services – Contains rules governing the provision of miscellaneous wireless communications services on various frequency bands allocated for flexible use pursuant to Section 303(y) of the Communications Act.

Part 80 – Stations in the Maritime Service – Contains licensing, technical, and operational rules for various maritime radio services.

Part 90 – Private Land Mobile Radio Services – Contains rules applicable to general licensing and application filing requirements, technical standards, and operations for Specialized Mobile Radio and other commercial, private, and public safety licensees.

Part 95 – Personal Radio Service – Contains licensing, technical, and operational rules for the 218-219 MHz Service.

Part 101 – Fixed Microwave Services – Contains licensing, technical, and operational rules for private and common carrier fixed microwave services, including rules or subparts governing the 24 GHz Local Television Transmission, Local Multipoint Distribution, and 39 GHz services, and Multiple Address Systems.

10. In response to the *Public Notice*, the Commission received three comments and two reply comments.<sup>13</sup>

## **B. Recent and Ongoing Activities**

### **1. Major Initiatives**

11. Prior to and contemporaneously with the 2004 Biennial Regulatory Review, the Bureau has engaged in a number of major initiatives to streamline and eliminate unnecessary rules affecting wireless services.

#### **(a) Revisions to the Cellular Rules**

12. In September 2002, the Commission modified or eliminated Part 22 Cellular rules that had become outdated due to technological change, increased competition, or supervening rules. Among other things, the Commission adopted a five-year sunset of the requirement that cellular licensees provide analog service, but stated that it would not eliminate the rule at the end of the five-year period if hearing aid compatible devices

<sup>13</sup> Commenters are listed in Appendix II.

were not available.<sup>14</sup> This proceeding was an outgrowth of the 2000 Biennial Review. On February 12, 2004, the Commission released the *Part 22 Cellular Biennial Review Order on Reconsideration*,<sup>15</sup> resolving various petitions for reconsideration filed in this proceeding. Among other things, the Commission affirmed the decision to establish a five-year sunset period for the removal of the Commission's requirement that cellular carriers provide analog service.

**(b) Deletion of the Wireless Resale Rule**

13. As of November 24, 2002, the wireless resale rule, Section 20.12(b), which prohibited CMRS providers from unreasonably restricting resale of their services, ceased to be effective.<sup>16</sup> The Commission previously determined that the resale rule would no longer be effective five years after completion of its initial grant of broadband PCS licenses.<sup>17</sup> As a follow-up, the staff now recommends deletion of the resale rule from the Code of Federal Regulations.

**(c) Elimination of LEC and CMRS Affiliation Requirement**

14. The Commission has also eliminated the "separate affiliate" requirement for incumbent LECs under Section 20.20 of the Commission's rules.<sup>18</sup> The rule required an incumbent LEC providing in-region broadband CMRS service to provide such services through an affiliate that satisfied certain requirements. The rule sunset on January 1, 2002. As a follow-up, the staff now recommends deletion of the separate affiliate rule from the Code of Federal Regulations.

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<sup>14</sup> See Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401, 18410-11 (2002); Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Second Report and Order*, 17 FCC Rcd 18485 (2002); Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Erratum*, DA 02-2969 (rel. Nov. 4, 2002) (*Cellular Biennial Review First Report and Order* and *Cellular Biennial Review Second Report and Order*, respectively).

<sup>15</sup> Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, WT Docket No. 01-108, *Order on Reconsideration*, 19 FCC Rcd 3239 (2004).

<sup>16</sup> See 47 C.F.R. § 20.12(b)(3).

<sup>17</sup> See "Notice Commencement of Five-Year Preceding Termination of Resale Rule Applicable to Certain Covered Commercial Mobile Radio Service Providers," CC Docket No. 94-54, *Public Notice*, 13 FCC Rcd 17427 (1998).

<sup>18</sup> 47 C.F.R. § 20.20(f).

(d) **Spectrum Leasing**

15. In 2003, in the *Secondary Markets Report and Order* in WT Docket No. 00-230, the Commission took action to remove unnecessary regulatory barriers to the development of secondary markets in spectrum usage rights.<sup>19</sup> In that proceeding, the Commission established rules to enable spectrum users to gain access to licensed spectrum by entering into different types of spectrum leasing arrangements with licensees in most Wireless Radio Services. In addition, the Commission adopted rules to streamline its approval procedures for license assignments and transfers of control in most Wireless Radio Services. In 2004, the Commission adopted the *Secondary Markets 2<sup>nd</sup> Report and Order*, which further streamlined the processing of certain spectrum leasing and transfer/assignment applications and authorized licensees to make spectrum available to third-party users on a “private commons” basis.<sup>20</sup>

(e) **Historic Preservation Programmatic Agreement**

16. On October 5, 2004, the Commission released a *Report and Order* to implement a Nationwide Programmatic Agreement to be signed by the Commission, the Advisory Council on Historic Preservation (“Advisory Council” or “Council”) and the National Conference of State Historic Preservation Officers (“Conference”).<sup>21</sup> The Nationwide Agreement, as authorized by Section 214 of the National Historic Preservation Act of 1966 (“NHPA”) and Section 800.14(b) of the Advisory Council’s rules, streamlines and tailors the Section 106 NHPA review process for communications towers and other Commission-licensed facilities.

(f) **Rural Report & Order**

17. As part of its 2000 Biennial Review, the Commission in October 2003 released a *Notice of Proposed Rule Making* in WT Docket No. 02-381, which sought comment regarding a variety of proposals to eliminate unnecessary regulatory barriers and encourage the deployment of spectrum-based services in rural areas.<sup>22</sup> On September

<sup>19</sup> In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) (*Secondary Markets Report and Order*).

<sup>20</sup> In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503 (2004) (*Secondary Markets 2<sup>nd</sup> Report and Order*).

<sup>21</sup> In the Matter of Nationwide Programmatic Agreement Regarding The Section 106 National Historic Preservation Act Review Process, WT Docket No. 03-128, *Report and Order*, FCC 04-222 (rel. Oct. 5, 2004).

<sup>22</sup> Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, WT Docket No. 03-202, *Notice of Proposed Rulemaking*, 18 FCC Rcd 20802 (2003) (*Rural NPRM*).

27, 2004, the Commission issued the *Rural R&O and FNPRM* and adopted several measures designed to increase carrier flexibility, reduce regulatory costs of providing service to rural areas, and promote access to both spectrum and capital resources for entities seeking to provide or improve wireless services in rural areas.<sup>23</sup> The Commission also adopted measures to facilitate the deployment of wireless services in rural areas, including the elimination of the cellular cross-interest rule in Rural Service Areas.<sup>24</sup>

**(g) Air-Ground – Part 22 Non-Cellular Services Proceeding**

18. As part of its 2000 and 2002 Biennial Reviews, the Commission issued a *Notice of Proposed Rulemaking* in April 2003, to reexamine its rules governing the provision of air-ground telecommunications services on commercial airplanes in order to enhance the options available to the public.<sup>25</sup> The Commission also proposed to revise or eliminate certain Part 22 Public Mobile Services rules that have become obsolete as the result of technological change, increased competition in CMRS and/or supervening changes to related Commission rules.<sup>26</sup> On December 15, 2004, the Commission adopted an *Order* revising these rules.<sup>27</sup> The Commission also announced that it would consider whether to revise or eliminate its current ban on the use of cellular telephones on airborne aircraft.<sup>28</sup> The *Notice of Proposed Rulemaking* commencing the Commission's review of this matter is expected to be released in early 2005.<sup>29</sup>

**(h) Quiet Zones Report and Order**

19. As part of its 2000 Biennial Review, the Commission issued a *Notice of Proposed Rulemaking* in November 2001, seeking to identify and address ways of streamlining the processing of applications in designated Quiet Zones, while

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<sup>23</sup> Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, WT Docket No. 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078 (2004) (*Rural R&O and FNPRM*).

<sup>24</sup> *Id.*

<sup>25</sup> In the Matter of Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services - Biennial Regulatory Review-Amendment of Parts 1, 22, and 90 of the Commission's Rules, *Notice of Proposed Rulemaking*, 18 FCC Rcd 8380 (2003).

<sup>26</sup> *Id.*

<sup>27</sup> FCC News Release, *FCC Paves the Way for New Broadband Services in the Air* (rel. Dec. 15, 2004).

<sup>28</sup> FCC News Release, *FCC to Examine Ban on Using Cellular Telephones on Airborne Aircraft* (rel. Dec. 15, 2004).

<sup>29</sup> FCC News Release, *Instructions on Submitting Public Comments in the FCC's Review of the Use of Cellular Telephones on Airborne Aircraft* (Docket No. WT 04-435) (rel. Dec. 23, 2004).



simultaneously ensuring the continued protection of these sensitive areas.<sup>30</sup> On February 12, 2004, the Commission released a *Report and Order*<sup>31</sup> which addressed these issues and concerns raised in CTIA's Petition for Rulemaking filed as part of the Year 2002 Biennial Regulatory Review proceeding.<sup>32</sup>

**(i) Tribal Lands Proceedings**

20. In March, 2003, the Commission released its *Second Report and Order and Second Further Notice of Proposed Rulemaking*<sup>33</sup> in this proceeding and clarified rules previously adopted in the 2000 *Report and Order and Further Notice of Proposed Rulemaking* in WT Docket 99-2661<sup>34</sup> to provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. In September, 2004, the Commission issued a *Third Report and Order and Third Further Notice of Proposed Rulemaking*,<sup>35</sup> which addressed issues raised in the *Second Report and Order*, including raising the wireline telephone penetration rate at which tribal lands are eligible for a bidding credit from 70 percent or less, to 85 percent or less, and increasing the amount of the bidding credit available to carriers that pledge to deploy on and serve qualifying tribal lands.

**(j) Streamlining and Harmonization Biennial Review Proceeding**

21. As part of its 2000 and 2002 Biennial Reviews, the Commission released a *Notice of Proposed Rulemaking*<sup>36</sup> on January 7, 2004, which commenced a proceeding to streamline and harmonize licensing provisions in the wireless radio services (WRS). The *Streamlining NPRM* examines whether revisions are necessary regarding our broadband PCS power rules under Part 24, including the possible elimination of the Part 24 transmitter power restrictions and possible increases to the current Part 24 radiated power

<sup>30</sup> In the Matter of Review of Quiet Zones Application Procedures, WT Docket No. 01-319, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20690 (2001).

<sup>31</sup> In the Matter of Review of Quiet Zones Application Procedures, WT Docket No. 01-319, *Report and Order*, 19 FCC Rcd 3267 (2004).

<sup>32</sup> See Cellular Telecommunications & Internet Association's Petition for Rulemaking Concerning the Biennial Review of Regulations Affecting CMRS Carriers, filed July 25, 2002.

<sup>33</sup> In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775 (2003).

<sup>34</sup> In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 11794 (2000).

<sup>35</sup> In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Third Report and Order and Third Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17562 (2004).

<sup>36</sup> In the Matter of Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 04-356, *Notice of Proposed Rulemaking*, 19 FCC Rcd 708 (2004) (*Streamlining NPRM*).

limits. The Commission proposed various additional amendments to Parts 1, 22, 24, 27, and 90 of the rules to modify or eliminate provisions that treat licensees differently and/or have become outdated as a result of technological change, supervening changes to related Commission rules, and/or increased competition within WRS.

**(k) Gulf of Mexico Cellular Proceeding**

22. In 2002, the Commission released the *Gulf of Mexico Report and Order* in which it established a comprehensive regulatory scheme for the Gulf of Mexico designed to facilitate the provision of cellular service to unserved areas of the Gulf region, and to resolve operational conflicts between Gulf and land carriers while minimizing the disturbance to existing operations and contractual relationships.<sup>37</sup> In June, 2003, the Commission issued an *Order on Reconsideration* and resolved outstanding petitions for reconsideration filed against the *Report and Order*.<sup>38</sup>

**(l) 70/80/90 GHz Proceeding**

23. In 2003, the Commission released the *70-80-90 GHz Report and Order*,<sup>39</sup> in which it established a flexible and innovative regulatory framework for the 70/80/90 GHz bands that does not require traditional "Part 101" frequency coordination among non-Federal Government users. Under this new approach, the Commission will issue an unlimited number of non-exclusive nationwide licenses to non-Federal Government entities for the 12.9 gigahertz of spectrum allocated for commercial use. These licenses serve as a prerequisite for registering individual point-to-point links in the 70/80/90 GHz bands, which are allocated on a shared basis with Federal Government users. Thereafter, a licensee will be authorized to operate links under its nationwide license once a given link is (1) coordinated with the National Telecommunications and Information Administration (NTIA) with respect to Federal Government operations and (2) registered as an approved link with the Commission (interim process) or third-party Database Manager (permanent process).

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<sup>37</sup> See *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*, WT Docket No. 97-112, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 97-112, *Report and Order*, 17 FCC Rcd 1209 (2002).

<sup>38</sup> See *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*, WT Docket No. 97-112, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 97-112, *Order on Reconsideration*, 18 FCC Rcd 13169 (2003).

<sup>39</sup> See *Allocation and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, WT Docket No. 02-146, *Report and Order*, 18 FCC Rcd 23318 (2003) (*recon pending*). See also *Notice of Proposed Rule Making*, 17 FCC Rcd 12182 (2002).

**(m) MDS-ITFS Proceeding**

24. On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that transforms the rules governing the Multipoint Distribution Service (MDS) and the Instructional Television Fixed Service (ITFS) in order to encourage the deployment of broadband services by commercial and educational entities.<sup>40</sup> To better reflect the forward-looking vision for these services, the Commission renamed MDS the Broadband Radio Service (BRS) and ITFS the Educational Broadband Service (EBS). In addition, the Commission deleted Part 21 and Subpart I of Part 74, and consolidated the rules for BRS and EBS into Part 27 of the Commission's Rules.

**(n) AWS Service Rules Proceeding**

25. In November 2003 the Commission released a *Report and Order* adopting service rules for the first 90 megahertz of Advanced Wireless Service (AWS) spectrum, consisting of 1710-1755 and 2110-2155 MHz.<sup>41</sup> Most significantly, the order provided for flexible use of the spectrum under Part 27 of the Rules. On September 24, 2004 the Commission released a Notice of Proposed Rule Making proposing service rules for 20 megahertz of additional AWS spectrum (1915-1920, 1995-2000, 2175-2180 and 2020-2025 MHz), again to be licensed under the Part 27 flexible use regime.<sup>42</sup>

**C. Summary of Recommendations**

26. Pursuant to Section 11, the Bureau has determined based on its own review or on comments received in this proceeding that there are some areas in which the development of meaningful competition among wireless telecommunications providers may warrant changing or eliminating regulations. As summarized below, the staff recommends revising or eliminating a number of several specific rules, either as part of various efforts already underway or as part of newly initiated proceedings.<sup>43</sup>

**1. Review/Revision/Streamlining Efforts Already Under Way**

27. The Bureau already is in the process of considering revisions or possible elimination of numerous rules relating to wireless radio services. These efforts include revisions guided by competitive developments contemplated by Section 11 as well as

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<sup>40</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.; WT Docket No. 03-66, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004).

<sup>41</sup> See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003).

<sup>42</sup> See Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 04-356, *Notice of Proposed Rule Making*, 19 FCC Rcd 19263 (2004).

<sup>43</sup> For a detailed discussion of the staff's rule part analysis, including a discussion of each of the comments filed in this Biennial Review proceeding and the staff's recommendations, see Appendix IV, *infra*.

streamlining efforts that fall outside the scope of Section 11. They are briefly summarized below.

28. *Parts 1, 22, 24, 27, and 90* - The Commission is currently considering proposed revisions to streamline and harmonize various technical rule parts affecting the wireless radio services.<sup>44</sup>

29. *Section 20.11 rules relating to intercarrier compensation*. The Commission currently is exploring ways of reforming its intercarrier compensation rules, including the rules set forth in Section 20.11. It is examining the existing patchwork of interconnection rules and seeking to adopt an approach that minimizes the need for regulatory intervention.<sup>45</sup>

30. *Section 20.12(c) rules relating to CMRS carrier "roaming" obligations*. The Commission is examining whether, in light of competitive and other developments, it should eliminate the manual roaming rule applicable to CMRS carriers.<sup>46</sup>

31. *Part 22* - The Commission is considering revisions to various Part 22 Public Mobile Service rule sections proposed in the *Streamlining NPRM*.<sup>47</sup> In addition, on December 15, 2004, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on whether to revise or eliminate its current ban on the use of cellular telephones on airborne aircraft.<sup>48</sup> The *Notice of Proposed Rulemaking* commencing the Commission's review of this matter is expected to be released in early 2005.

32. *Part 24* - The Commission is currently considering whether to eliminate the Part 24 transmitter output power restrictions and increase the current Part 24 radiated power limits.<sup>49</sup>

33. *Part 80 rules*. In 2002, the Commission converted the Automated Maritime Telecommunications System (AMTS) to geographic licensing,<sup>50</sup> and proposed to consolidate, revise, and streamline the Part 80 rules to address new international maritime requirements, improve the operational ability of all users of marine radios, and remove

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<sup>44</sup> See generally *Streamlining NPRM*, 19 FCC Rcd 708 (2004).

<sup>45</sup> See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd 9610 (2001).

<sup>46</sup> See *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service*, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, 15 FCC Rcd 21628 (2000) (*Roaming Notice*).

<sup>47</sup> See *Streamlining NPRM*, 19 FCC Rcd 708 (2004).

<sup>48</sup> FCC News Release, *FCC to Examine Ban on Using Cellular Telephones on Airborne Aircraft* (rel. Dec. 15, 2004).

<sup>49</sup> See *Streamlining NPRM*, 19 FCC Rcd 708 (2004).

<sup>50</sup> See *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, *Second Memorandum Opinion and Order and Fifth Report and Order*, 17 FCC Rcd 6685 (2002).

unnecessary or duplicative requirements.<sup>51</sup> On January 8, 2004, the Commission updated and streamlined Part 80.<sup>52</sup> On May 11, 2004, the Commission, on its own motion, accelerated the effective date of the rules adopted in the *GMDSS Second Report and Order* governing certification of AIS equipment.<sup>53</sup>

34. *Part 90 rules relating to Intelligent Transportation Systems (ITS) Radio Service rules.* On November 7, 2002, the Commission sought comment on licensing and service rules for Dedicated Short-Range Communication Services (DSRCS) in the 5.9 GHz band.<sup>54</sup> Generally, the *NPRM* sought comment on licensing and service rules proposed by DOT and ITS America. On December 17, 2003, the Commission adopted service and licensing rules for DSRCS in the ITS Radio Service in the 5.9 GHz band.<sup>55</sup> On September 30, 2004, the Wireless Telecommunications Bureau announced the details of the licensing and transmitter location registration process for DSRCS in the ITS.<sup>56</sup> The Commission received petitions for reconsideration of the *ITS Report and Order*, which the staff is reviewing. The Commission also has pending before it a Petition for Rulemaking regarding its Location and Monitoring Service (LMS) rules.<sup>57</sup>

## **2. Proceedings that Staff Recommends Be Initiated in Order To Modify or Repeal Current Rules**

35. In response to the comments received or as a result of ongoing review of the rules within the purview of the Bureau, staff recommends initiating a new proceeding or proceedings to consider modifying or eliminating the following rules. The modifications proposed below generally involve streamlining of procedural, technical, and operational rules for reasons that fall outside the scope of Section 11 review.

<sup>51</sup> See Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 00-48, 17 FCC Rcd 6741 (2002).

<sup>52</sup> See Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Second Report and Order, Sixth Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 00-48, 19 FCC Rcd 3120 (2004)

<sup>53</sup> See Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Order on Reconsideration*, WT Docket No. 00-48, 19 FCC Rcd 9105 (2004)

<sup>54</sup> Amendment of the Commission's Rules Regarding Dedicated Short-Range Communication Services in the 5.850-5.925 GHz Band (5.9 GHz Band), *Notice of Proposed Rulemaking and Order*, 17 FCC Rcd 23,136 (2002).

<sup>55</sup> Amendment of the Commission's Rules Regarding Dedicated Short-Range Communication Services in the 5.850-5.925 GHz Band (5.9 GHz Band), *Report and Order*, 19 FCC Rcd 2458 (2004).

<sup>56</sup> Wireless Telecommunications Bureau Announces Details Concerning the Licensing and Transmitter Location Registration Process for the Dedicated Short Range Communications Service in the Intelligent Transportation, *Public Notice*, DA 04-3165, (Sept. 30, 2004).

<sup>57</sup> See "Wireless Telecommunications Bureau Seeks Comment On Petition For Rulemaking Regarding Location And Monitoring Service Rules," *Public Notice*, 17 FCC Rcd 6438 (WTB 2002); "Wireless Telecommunications Bureau Extends Comment Cycle On Petition For Rulemaking Regarding Location And Monitoring Service Rules," *Public Notice*, 17 FCC Rcd 8377 (WTB 2002).

36. *Section 1.2111(a) filing requirements for applications for transfers of control or assignment of licenses.* Staff continues to recommend that the Commission consider revising section 1.2111(a) to eliminate the requirement that an applicant seeking approval for a transfer of control or assignment of a license within three years of receiving the license through competitive bidding file transaction documents with the Commission. In addition, since the staff made its initial recommendation, the Commission has adopted rules governing secondary market transfers that, with the exception of transfers involving designated entities, generally do not require that the parties to the transfer file transaction documents with the Commission. Staff's proposal to revise section 1.2111(a) is therefore consistent with the Commission's recent approach of generally not requiring parties transferring licenses to file transaction documents with the Commission.

37. *Part 17 rules.* WTB staff recommends that the Commission institute a proceeding to examine the Part 17 rules to modify or eliminate, without compromising public safety goals, any rules which create unnecessary administrative burdens or are apt to confuse owners and licensees who attempt to comply with our Part 17 rules. PCIA filed comments suggesting changes to the following Part 17 Rules: Sections 17.2, 17.4, 17.23, 17.47, 17.50, 17.51 and 17.57.<sup>58</sup> Cingular and CTIA filed Reply Comments in support of PCIA's recommended changes.<sup>59</sup> CTIA further recommended that any Part 17 changes reflect the competitive nature of the wireless industry, streamline the siting of wireless communications structures and antennas, provide frequency and timely coordination with Federal Aviation Administration rules and procedures, and facilitate the siting of wireless communications structures.<sup>60</sup> WTB staff recommends that the Commission institute a proceeding to examine the Part 17 rules to modify or eliminate, without compromising public safety goals, any rules which create unnecessary administrative burdens or are apt to confuse owners and licensees who attempt to comply with our Part 17 rules.

38. *Section 20.12 as it relates to wireless resale.* Staff recommends that paragraph (b) of this Section (and the last sentence of paragraph (a) defining the scope of paragraph (b)) be removed. Section 20.12(b)(3) provides that the rule has already sunset as of November 24, 2002.<sup>61</sup>

<sup>58</sup> Comments of PCIA – The Wireless Infrastructure Association (PCIA) filed July 12, 2004.

<sup>59</sup> Reply Comments of Cingular Wireless, LLC (Cingular) filed August 16, 2004; Reply Comments of CTIA – The Wireless Association (CTIA) filed August 12, 2004.

<sup>60</sup> Reply Comments of CTIA – The Wireless Association (CTIA) filed August 12, 2004.

<sup>61</sup> See also "Notice Commencement of Five-Year Period Preceding Termination of Resale Rule Applicable to Certain Covered Commercial Mobile Radio Service Providers," CC Docket No. 94-54, *Public Notice*, 13 FCC Rcd 17427 (1998).

#### **IV. APPENDICES**

39. Attached to this Staff Report are three appendices. Appendix I lists all of the proceedings initiated pursuant to the 2002 Biennial Regulatory Review, as well as major related proceedings that have streamlined, revised, or eliminated rule provisions within the purview of the Bureau. Appendix II lists the commenting parties in this proceeding. Finally, Appendix III provides a full analysis of the rule parts implicated by Section 11 within the Bureau's purview, discusses advantages and disadvantages associated with the particular rules, summarizes comments received, and details staff recommendations.

## APPENDIX I: 2000 AND 2002 BIENNIAL REGULATORY REVIEW AND RELATED PROCEEDINGS

### I. PROCEEDINGS INITIATED – COMPLETED/SIGNIFICANT ORDERS ISSUED

- (1) Commission implemented rules to introduce spectrum leasing and transfer/assignment applications. *See In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503 (2004).
- (2) Commission has adopted rules to eliminate reviews under Section 106 of the National Historic Preservation Act where the potential for impact upon historic sites is quite unlikely, and to clarify and streamline the review process for those undertakings that remain subject to review. Specifically, the following categories of undertakings have been excluded from the Section 106 review process: enhancements to towers; replacement and temporary towers; certain towers constructed on industrial and commercial properties or utility corridor rights-of-way; and construction in SHPO/THPO-designated areas. *See In the Matter of Nationwide Programmatic Agreement Regarding The Section 106 National Historic Preservation Act Review Process*, WT Docket No. 03-128, *Report and Order*, FCC 04-222 (rel. Oct. 5, 2004).
- (3) Commission adopted a *Report and Order and Further Notice of Proposed Rulemaking* that transforms the rules governing the Multipoint Distribution Service (MDS) and the Instructional Television Fixed Service (ITFS) in order to encourage the deployment of broadband services by commercial and educational entities. *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket Nos. 03-66, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004).
- (4) Commission adopted revisions to the service rules for licensing the Multichannel Video Data & Distribution Service (MVDDS) in response to several petitions. *See Amendment of Parts 2 and 25 of Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in Ku-Band Frequency Range*, ET Docket No. 98-206, *Fourth Memorandum Opinion and Order*, 18 FCC Rcd 8428 (2003) (*appeal pending*).
- (5) Commission revised and improved the service areas for licensing Multichannel Video Data & Distribution Service (MVDDS). *See Amendment of Parts 2 and 25 of Commission's Rules to Permit Operation of NGSO FSS*



Systems Co-Frequency with GSO and Terrestrial Systems in Ku-Band Frequency Range, ET Docket No. 98-206, *Third Report and Order*, 18 FCC Rcd 13468 (2003). *See also Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 7589 (2003).

- (6) Commission streamlined its requirements for applications affecting Quiet Zones and amended Section 101.31(b)(1)(v) to permit Part 101 applicants to initiate conditional operation provided they have obtained prior consent of the Quiet Zone entity. *See Review of Quiet Zones Application Procedures*, WT Docket No. 01-319, *Report and Order*, 19 FCC Rcd 3267 (2004).
- (7) Commission adopted new licensing and service rules to promote the commercial development and growth of spectrum in the 71-76 GHz, 81-86 GHz and 92-95 GHz bands. *See Allocation and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, WT Docket No. 02-146, *Report and Order*, 18 FCC Rcd 23318 (2003).
- (8) Commission adopted a *Third Order on Reconsideration* based on a petition filed by Independent MultiFamily Communications Council. *See Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, IB Docket 98-172, *Third Order on Reconsideration*, 19 FCC Rcd 10777 (2004).
- (9) Commission adopts several measures designed to increase carrier flexibility, reduce regulatory costs of providing service to rural areas, and promote access to both spectrum and capital resources for entities seeking to provide or improve wireless services in rural areas. *See Rural R&O and FNPRM*, WT Docket No. 03-202, 19 FCC Rcd 19078 (2004).
- (10) Commission addresses raising the wireline telephone penetration rate at which tribal lands are eligible for a bidding credit from 70 percent or less, to 85 percent or less, and increasing the amount of the bidding credit available to carriers that pledge to deploy on and serve qualifying tribal lands. *See In the Matter of Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Third Report and Order and Third Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17652 (2004).
- (11) Commission establishes comprehensive regulatory scheme for Gulf of Mexico to provide cellular service to unserved Gulf region. *See Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*, WT Docket No. 97-112, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 97-112, *Report and Order*, 17 FCC Rcd 1209 (2002).
- (12) Commission adopted rules to foster a more timely transition to narrowband technology in the 150-174 MHz and 421-512 MHz bands. *See*

Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034 (2003).

- (13) Commission allocated 50 megahertz of spectrum in the 4940-4990 MHz (4.9 GHz) band for fixed and mobile services in support of public safety, and adopted service rules for this band. *See* The 4.9 GHz Band Transferred from Federal Government Use, WT Docket No. 00-32, *Second Report and Order and Further Notice of Proposed Rulemaking*, 17 FCC Rcd 3955 (2002). Commission adopted licensing and service rules for the 4.9 GHz band. *See* 4.9 GHz Band Transferred from Federal Government Use, *Memorandum Opinion and Order and Third Report and Order*, 18 FCC Rcd 9152 (2003).
- (14) Commission adopted rules to consolidate, revise, and streamline Part 80 of its rules to address new international maritime requirements, improve the operational ability of users of marine radios, and remove unnecessary or duplicative requirements. *See* Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, WT Docket No. 00-48, *Report and Order*, 19 FCC Rcd 3120 (2004).
- (15) Commission revised rules and policies governing low power (two watt) operations in the 450-470 MHz band. *See* Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band, *Report and Order*, WT Docket No. 02-57, 18 FCC Rcd 3948 (2003).
- (16) Commission provided procedural guidelines regarding the documentation of Public Safety Answering Point (PSAP) readiness. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order on Reconsideration*, FCC 03-98 (rel. May 8, 2003).
- (17) Commission adopted service rules for the first 90 megahertz of Advanced Wireless Service (AWS) spectrum, consisting of 1710-1755 and 2110-2155 MHz. Most significantly, the order provided for flexible use of the spectrum under Part 27 of the Rules. *See* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003).
- (18) Commission adopted technical and procedural measures to address the ongoing and growing problem of interference to public safety communications in the 800 MHz band. *See* Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order*, 19 FCC Rcd 14969 (2004) *as amended by* Erratum, DA 04-3208, 19 FCC Rcd 19651 (2004) and Erratum, DA 04-3459, rel. Oct. 29, 2004. *See also* In the

Matter of Improving Public Safety Communications in the 800 MHz Band, Supplemental Order and Order on Reconsideration, WT Docket 02-55, FCC 04-294 (rel. Dec. 22, 2004).

- (19) Commission imposed requirements on wireless carriers to port numbers to other carriers. *See Telephone Number Portability*, Memorandum Opinion and Order, CC Docket No. 95-116, 18 FCC Rcd 29071 (2003), *appeal docketed*, Central Texas Tel. Coop. Inc. v. FCC, No. 03-1405 (D.C. Cir. Nov. 11, 2003). This porting requirement, also referred to as local number portability (LNP), allows consumers to retain their existing phone numbers when switching carriers. *See* 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(I); *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8368 (1996). In November, 2003, Commission clarified issues relating to LNP between wireless and wireline carriers, also known as intermodal porting. *See Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, 18 FCC Rcd 23697 (2003), *appeal docketed*, United States Telecom Ass'n v. FCC, No. 03-1414 (D.C. Cir. Nov. 20, 2003). Commission concurrently sought comment on facilitating wireline-to-wireless porting if the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer. *Id.* at 23714-15. On September 16, 2004, Commission sought comment on the recommendation of the North American Numbering Council for reducing the time interval for intermodal porting. *See Telephone Number Portability*, Second Further Notice of Proposed Rulemaking, CC Docket 95-116, 19 FCC Rcd 18515 (2004).
- (20) Commission adopted an Order revising the rules governing the air-ground telecommunications service and eliminating or streamlining a number of other rules pertaining generally to Part 22 public land mobile radio services. *See* FCC News Release, *FCC Paves the Way for New Broadband Services in the Air* (rel. Dec. 15, 2004).
- (21) Commission announced that it would consider whether to revise or eliminate its current ban on the use of cellular telephones on airborne aircraft. *See* FCC News Release, *FCC to Examine Ban on Using Cellular Telephones on Airborne Aircraft* (rel. Dec. 15, 2004). The Notice of Proposed Rulemaking commencing the Commission's review of this matter is expected to be released in early 2005. *See* FCC News Release, *Instructions on Submitting Public Comments in the FCC's Review of the Use of Cellular Telephones on Airborne Aircraft* (Docket No. WT 04-435) (rel. Dec. 23, 2004).

## II. PROCEEDINGS INITIATED/REVIEW PENDING

- (1) Commission has proposed possible revision or elimination of requirements placed on CMRS carriers regarding obligations to provide roaming. *See*

Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service, WT Docket No. 00-193, *Notice of Proposed Rulemaking*, 15 FCC Rcd 21628 (2000).

- (2) Commission has proposed service rules for 20 megahertz of additional Advanced Wireless Service (AWS) spectrum (1915-1920, 1995-2000, 2175-2180 and 2020-2025 MHz), to be licensed under the Part 27 flexible use regime. *See Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, WT Docket No. 04-356, *Notice of Proposed Rule Making*, 19 FCC Rcd 19263 (2004).
- (3) Commission has released a Notice of Inquiry regarding the impact that wireless communications facilities, such as cellular and broadcast towers, may have on migratory birds. The inquiry is designed to gather comment and information on scientific research and other related data relevant to migratory bird collisions with communications towers. *See In the Matter of Effects of Communications Towers on Migratory Birds*, WT Docket No. 03-187, FCC 03-205, *Notice of Inquiry*, 18 FCC Rcd 16,938 (rel. Aug. 20, 2003)
- (4) Commission is reviewing comments filed in response to a Petition for Rulemaking filed by FiberTower, Inc on May 26, 2004, to consider requirements to increase spectrum use by allowing a decrease in the size of antennas in the 10.7-11.7 GHz frequency band. *See RM-11043, Public Notice*, Rpt. No. 2666 (rel. July 23, 2004).
- (5) Commission has initiated a rulemaking in the 17.7-19.7 GHz frequency bands based on a filing by The Fixed Wireless Communications Coalition on May 4, 2001, to consider requirements to increase spectrum use and to accommodate licensees who need to relocate facilities from the 18.3-19.3 GHz band by allowing additional sizes of channels. *See Rechannelization of the 17.7-19.7 GHz Frequency Band for Fixed Microwave Services under Part 101 of the Commission's Rules*, WT Docket No. 04-143, *Notice of Proposed Rulemaking*, 19 FCC Rcd 11658 (2004).
- (6) Commission has initiated a rulemaking to propose rules for fixed, point-to-point microwave service in the 37-38.6 GHz and 42.0-42.5 GHz frequency bands and to modify certain rules in the 38.6-40.0 GHz frequency band. *See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz*, ET Docket No. 95-183, *Third Notice of Proposed Rule Making*, 19 FCC Rcd 8232 (2004).
- (7) On December 15, 2004, the Commission proposed to relax the rules restricting the provision of air-ground telecommunications service and is currently considering additional proposed revisions to various Part 22 Public Mobile Service rule sections, including the Paging and Radiotelephone Service. *See FCC News Release, Daily Digest Vol. 23 No. 238* (Dec. 16,

- 2004); In the Matter of Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services - Biennial Regulatory Review-Amendment of Parts 1, 22, and 90 of the Commission's Rules, *Notice of Proposed Rulemaking*, 18 FCC Rcd 8380 (2003).
- (8) Commission initiates proceeding to streamline and harmonize licensing provisions in the wireless radio services (WRS) under Parts 1, 22, 24, 27, and 90. *See* In the Matter of Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, *Notice of Proposed Rulemaking*, 19 FCC Rcd 708 (2004).
- (9) Commission has proposed to amend its rules to permit VHF public coast (VPC) and automated maritime telecommunications system (AMTS) station licensees to provide private mobile radio service to units on land. *See* In the Matter of Maritel, Inc. and Mobex Network Services, LLC, Petitions for Rule Making to Amend the Commission's Rules to Provide Additional Flexibility for AMTS and VHF Public Coast Station Licensees, WT Docket No. 04-257, RM-10743, 19 FCC Rcd 15225 (2004).
- (10) Commission is reviewing comments filed in response to Commission's *Second Further Notice of Proposed Rule Making* in WT Docket No. 99-87, in which Commission sought comment on a plan to migrate narrowband technology users to 6.25 kHz in the 150-174 MHz and 421-512 MHz bands. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034 (2003).
- (11) Commission is in the process of resolving petitions for reconsideration that seek to expand or clarify the exception for attribution of affiliate gross revenues to rural telephone cooperatives. *See* Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, FCC 03-98 (rel. May 8, 2003).

APPENDIX II

COMMENTING PARTIES (DOCKET NO. 04-180)

Comments:

Ericsson Inc.

PCIA – The Wireless Infrastructure Association (“PCIA”)

Reply Comments:

Cingular Wireless, LLC (“Cingular”)

CTIA – The Wireless Association (“CTIA”)

Ex Parte Comments:

Ericsson Inc.

**APPENDIX III: RULE PART ANALYSIS****PART 1 – PRACTICE AND PROCEDURE****PART 1, SUBPART F – WIRELESS TELECOMMUNICATIONS SERVICES  
APPLICATIONS AND PROCEDURES****Description**

Part 1, subpart F sets forth procedural rules governing the filing of applications and the issuance of wireless licenses.<sup>62</sup> The rules cover all of the basic types of applications associated with wireless licensing, including initial applications, amendments and modifications, waiver requests, requests for special temporary authorization, assignment and transfer applications, and renewals. In addition, subpart F includes rules concerning public notices, petitions to deny, dismissal of applications, and termination of licenses.

The subpart F rules were adopted as part of the 1998 Biennial Regulatory Review in the *Universal Licensing* proceeding, WT Docket No. 98-20.<sup>63</sup> The Commission initiated this proceeding in connection with the implementation of the Universal Licensing System (ULS), an integrated, automated system for electronic filing and processing of wireless applications. In the *Universal Licensing* proceeding, the Commission consolidated and streamlined its procedural rules into subpart F, which replaced numerous service-specific rules that had previously applied to different wireless services. In addition, the Commission adopted new standardized application forms designed for use in ULS, and adopted rules requiring all wireless telecommunications carriers, as well as certain other classes of wireless licensees, to file applications electronically.<sup>64</sup> The Commission made minor changes to those rules in the 1999 reconsideration of the *ULS Report and Order*.<sup>65</sup>

**Purpose**

The purpose of subpart F is to: (1) establish uniform procedures for the licensing of all wireless services; (2) minimize filing requirements; and (3) ensure the collection of reliable information from applicants and licensees.

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<sup>62</sup> 47 C.F.R. Part 1, subpart F.

<sup>63</sup> Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd 21027 (1998) (*ULS Report and Order*).

<sup>64</sup> 47 C.F.R. §1.913.

<sup>65</sup> Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476 (1999).

## Analysis

### Status of Competition

As noted above, the Part 1, subpart F rules pertain to procedural requirements relating to the many wireless radio services regulated pursuant to other specific rule parts addressed in our rule part analysis. Accordingly, we do not address here the status of competition in specific wireless radio services, but instead will address this issue in the context of rule parts affecting particular services, discussed *infra*.

### Advantages

Consolidating the wireless procedural rules into a single subpart provides greater clarity, consistency, and predictability to the licensing process than the prior array of sometimes inconsistent service-specific rules, forms, and procedures. This lessens the filing burden on applicants, and also facilitates more rapid and efficient processing by the Commission.

### Disadvantages

The requirement of electronic filing for all wireless telecommunications carriers imposes certain technical burdens and costs. In addition, the general procedural rules contained in subpart F impose administrative burdens on wireless applicants and licensees that are inherent to the licensing process.

### Recent Efforts

On January 7, 2004, the Commission released a Notice of Proposed Rulemaking (*Streamlining Notice*) initiating a proceeding to streamline and harmonize licensing provisions in the wireless radio services (WRS) that were identified in part during the Commission's 2000 and 2002 biennial regulatory reviews.<sup>66</sup> Among other matters, the Commission proposed to modify its rules to classify a deletion of a frequency and/or transmitter site from a multi-site authorization under Part 90 as a minor modification and sought comment on whether to eliminate the Part 24 transmitter output power limits and increase Part 24 EIRP limits in certain circumstances.

On February 12, 2004, the Commission released a Report and Order revising and streamlining its requirements for applications affecting Quiet Zones (*Quiet Zones Report and Order*).<sup>67</sup> In that Report and Order, the Commission made several changes to its Part 1 rules relating to Quiet Zones, including providing for immediate processing of applications that may implicate Quiet Zones if consent of the Quiet Zone entity has been

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<sup>66</sup> See In the Matter of Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 03-264, Notice of Proposed Rulemaking, 19 FCC Rcd 708 (2004) (*Streamlining NPRM*).

<sup>67</sup> See In the Matter of Review of Quiet Zones Application Procedures, WT Docket No. 01-319, Report and Order, 19 FCC Rcd 3267 (2004) (*Quiet Zones Report and Order*).